IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.Nos.17573 to 17576 of 1997

State Bank of India
Asaveerankudikadu Branches
R.S.Mathur (via)
Ariyalur Taluk,
Tiruchirapalli Dt. ..1st Petitioner in W.P.17574/97

State Bank of India,
Varadarajanpettai
Tiruchy District ..2nd Petitioner in W.P.17573/97 to 17576/97

1. State Bank of India,
Ariyalur,
Tiruchy District ..1st Petitioner in W.P.17575/97

1. State Bank of India,
Pudukottai Branch,
Kizha Raja Veedhi,
Pudukottai. ..1st Petitioner in W.P.17576/97

2. State Bank of India rep. by
the Deputy General Manager
Personnel Section, Zonal Office
Tiruchirapalli. ..2nd Petitioner in W.P.17573/97 to 17576/97

Vs

1. The Inspector of Labour
Tiruchirapalli. ... Respondents in all W.Ps
2. V.Elayaperumal ... Respondents in W.P.17573/1997
3. Rathinaswamy ... Respondents in W.P.17574/1997
4. M.Selvam ... Respondents in W.P.17575/1997
5. B.Rengaraj ... Respondents in W.P.17576/1997

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records mfrom the file of the Inspector of Labour Tiruchirapalli,

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the 1st respondent herein and quash his order dated in RC.No.20382/1995 dated 31.1.1997.

For petitioners : Mr.S.Jayaraman

For R1 : Mrs.C.K.VishnuPriya, GA

For R2 to R5 : Mr.N.G.R.Prasad

O R D E R

1.00 The moot question that arises for determination is whether the temporary employees of Nationalised Bank are entitled to claim the benefits under Tamil Nadu Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short "Act 1981").

2.00 The petitioners in the writ are State Bank of India and its officials.

3.00 The first respondent is Inspector of Labour, Tiruchirapalli. All the other respondents are the temporary employees of the Bank. They are hereinafter referred to as workman.

4.00 The prayer of petitioners is to quash the order of the first respondent, the Labour Inspector wherein, the first respondent held that the Act 1981 is applicable to the workmen in the State of Tamil Nadu.

5.00 In nutshell the facts are:- The workmen were engaged as a temporary Sub-Staff in the leave vacancies with the Bank and their services are utilised as and when it was required and they are purely appointed as temporary employees and they were never appointed in any permanent vacancies/posts, but only during the leave periods of the regular employees in the leave vacancies.

5.01 While so the federation of the bank espoused the cause of the temporary employees, resulting five settlements. Minutes were recorded in writing and all the settlements are before the Regional Labour Commissioner (Central), Hyderabad.

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5.02 The sum and substance of the settlements on this issue is follows:

1. The eligible temporary employees should be selected and wait listed as per the number of days of service put in by them in the respective zone.

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2. As and when vacancies arise, the vacancies should be filled up from the wait list.

3. All the vacancies are to be identified upto 31.12.1994 are to be filled up from the wait list.

4. The wait list will be in operation till 31.3.1997 i.e. three years from the date of its preparation.

5. The wait list will lapse on 31.3.1997.

6.00 The contention of the petitioners is that as per the terms of settlement, a list of temporary employees were prepared and the workmen who are on temporary employment have been included in the list and as and when the vacancies arise the candidates from the wait listed are absorbed permanently, strictly in accordance with the seniority in the waiting list and the workmen in dispute are shown at different places and they did not reach the seniority level hence these could not be absorbed in the permanent posts and there are many such candidates and all those candidates including workmen are given temporary employment in the branches near to their respective native places as and when vacancies arise in messengerial positions.

7.00 The specific contention of the petitioners is that the workmen are given temporary employment in the Petitioner's Bank and they are eligible to be absorbed into the permanent posts, as and when there is a vacancies in the permanent posts. But, it should be in accordance with the seniority in the waiting list and the said procedure was strictly in accordance with the settlements which have been entered into all India Level with the All India State Bank of India Staff Federation.

8.00 It is stated that the workmen applied for absorption in permanent vacancies and since all the vacancies arising on 31.12.1994, are to be filled up from the wait list as per seniority the claims of the workmen could not be considered as it amounts to over-riding the clauses of the settlement and over working many other sessions in the wait list.

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9.00 Aggrieved by the same, the workmen filed an application before the first respondent, the Inspector of Labour under Section 3 of the Act 1981.

10.00 The first respondent issued notice to the petitioners who filed a detailed counter disputing the claim and after hearing allowed the claim of workmen.

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11.00 Aggrieved by the same the writ is before this court.

12.00 The second respondent filed counter wherein, it is stated that the provisions of Act 1981 are applicable to the petitioner Bank. The contention of the workmen is that the settlement as well as the circular quoted by the bank cannot deny the benefit to the workmen conferred under the Act 1981. It is stated that the petitioner bank has not obtained exemption under Section 9 of the Act 1981 from the appropriate Government hence the provisions are applicable to all the industrial establishments located in the territory of Tamil Nadu and the petitioner is one such establishment it is further stated that since the workmen is working for more than 480 days, they are entitled to become permanent employees.

13.00 Heard lengthy and detailed arguments of both sides.

14.00 The points for determination are:

(i) whether the Nationalised Banks are covered under the provisions of Act 1981.

(ii) whether the workmen can claim benefits under Act 1981.

15.00 Discussion:

15.01 C.V.Raman Vs. Bank of India
(1988 (2) LLJ 423)

the Apex Court held that the Nationalised Banks are establishments under the Central Government. In this case a question arose to the effect that the Tamil Nadu Shops Act was applicable to the Bank in view of the provisions contained in Section 4(1) thereof which exempted inter-alia an establishment under the Central Government from the purview of the act. After an elaborate discussion, their Lordships of the Supreme Court held that the State Bank of India and other National Banks are establishments under the Central Government and the provisions of Shops Act are not applicable as they are exempted under Section (4)(C).

15.02: While so, the forceful contention of the workmen before the 1st respondent and before this court in this writ is that in view of the definitions of the term 'establishment', read with that of 'commercial establishment, contained in the act, the bank is an establishment, consequently they are covered under the provisions of the Shops act unless specifically exempted under the Act and the definition of 'Industrial establishment' as defined under section 2,3(e) says that an establishment as defined in clause (6) of

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Section 2 of Tamil Nadu Shops and Establishment Act 1947, the petitioners bank is an establishment under Act 1981 and the provisions of the Act 1981 are applicable:

Thus the argument of the petitioner is without any substance in view of the above judgement of Apex Court reported in 1988 II LLJ 423.

Thus, I hold that the petitioners Bank is not a commercial establishment or establishment as per Shops Act and accordingly it is not an Industrial Establishment under Act 1981 and thus the provisions of Act 1981 are not applicable.

15.03: The counsel for the workmen relied on the judgment reported in Andra Bank Vs. Inspector of Labour (1994 I L.L.N. 501) wherein, the single Judge of this court held that the Nationalised Bank is a commercial establishment and the Act 1981 is applicable to nationalised bank and the Statutory authority under the Act has jurisdiction to entertain a claim petition by an employee of nationalised bank. In paragraph No.13, it is observed that a cursory perusal of the various definitions, as extracted under Sections 2 and 3 of the Act, 'bank' comes within the field of "commercial establishment" and the same is included in "the establishment" falling under Clause (e) of Sub-section (3) of Section 2 of the Act 1981.

15.04: It is unfortunate to note that the decision of the Apex Court reported in 1988 II LLJ 423 is not brought to the notice of the said court at the time of delivery the above discussion and the above decision is delivered without referring to the decision of the Hon'ble Supreme Court of India. However the above decision has not become final in view of the Judgement in W.A.No.639/94 of this Court.
The learned counsel for the petitioner stated that the above decision of the single judge is challenged in W.A.No.693 of 1994 and their lordship's of the Division Bench set aside the findings of the single judge. The judgement of the Division Bench was delivered on 13.08.1997 and it is a fact that the findings in judgement reported in 1994 I L.L.N. 501 are vacated. In fact the Division Bench observed that the issue is left open to the decision at the appropriate time. The judgement of the Apex Court is not placed before the Division Bench also.

15.05: But, now all the three judgements are placed before me and by following the judgements of the Hon'ble Supreme Court of India reported in 1988 II L.L.J. 423 and the Division Bench judgement, I hold that the provision of Act 1981 are not applicable to petitioners Bank.

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15.06: According this point is answered in favour of writ petitioners.

16.00 Point-2:

16.01: I hold that the workmen are not entitled to any relief.

16.02: The petitioners relied on judgment in 1997 (6) SCC 584 Syndicate Bank Vs. Shankar Paul wherein, it has been held that a panel prepared by Bank for absorption of temporary Attenders on permanent basis in view of revised policy to appoint only empanelled candidates and after expiry of the period of one year, the empanelled candidates had no right for absorption. At paragraph 7 of the judgment, it is observed as follows:

> "7. Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branchwise. Following that new procedure yearly panels were prepared thereafter. Names of the respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the bank had informed the respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the Bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6.2.1988, we are of the opinion that the respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

16.03: In the above case, their Lordships were pleased to observe that whenever a panel was prepared by a public sector bank and empanelled persons are not absorbed within the period for which panel was prepared, then the High Court would not justify in issuing

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a direction which are inconsistent with the policy/scheme contained in the approach paper and the circular of the banks.

16.04: In paragraph 11, it is clearly observed that if such directions are given it would adversely affect rights of others.

16.05: The petitioners also relied in other judgment reported in 1997 (4) SCC 283 Sanjoy Bhattacharjee Vs.Union of India wherein, it is held that when a panel is prepared with a waiting list and the inclusion of candidates in merit list in excess of notified vacancies and in such case, the waiting list candidates have no right to claim appoint, if there are no vacancies within the period.

RESULT:

For all the foregoing reasons, all the writ petitions are allowed and the orders of the first respondent are set aside. No costs.

sgl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Inspector of Labour
Tiruchirapalli.

4 ccs to M/s. Row & Reddy, Advocate, SR.Nos.41441, 41443, 41440 and 41439

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